

AMENDMENTS TO LB681

Introduced by Health and Human Services.

1 1. Strike the original sections and insert the following new
2 sections:

3 Section 1. Section 38-131, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 38-131 (1) An applicant for an initial license to practice as a
6 registered nurse, ~~or a licensed practical nurse, a physical therapist, or~~
7 a physical therapy assistant or to practice a profession which is
8 authorized to prescribe controlled substances shall be subject to a
9 criminal background check. Except as provided in subsection (3) of this
10 section, the applicant shall submit with the application a full set of
11 fingerprints which shall be forwarded to the Nebraska State Patrol to be
12 submitted to the Federal Bureau of Investigation for a national criminal
13 history record information check. The applicant shall authorize release
14 of the results of the national criminal history record information check
15 to the department. The applicant shall pay the actual cost of the
16 fingerprinting and criminal background check.

17 (2) This section shall not apply to a dentist who is an applicant
18 for a dental locum tenens under section 38-1122, to a physician or
19 osteopathic physician who is an applicant for a physician locum tenens
20 under section 38-2036, or to a veterinarian who is an applicant for a
21 veterinarian locum tenens under section 38-3335.

22 (3) An applicant for a temporary educational permit as defined in
23 section 38-2019 shall have ninety days from the issuance of the permit to
24 comply with subsection (1) of this section and shall have his or her
25 permit suspended after such ninety-day period if the criminal background
26 check is not complete or revoked if the criminal background check reveals
27 that the applicant was not qualified for the permit.

1 Sec. 2. Section 38-3208, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 38-3208 The Respiratory Care Practice Act shall not prohibit:

4 (1) The practice of respiratory care which is an integral part of
5 the program of study by students enrolled in approved respiratory care
6 education programs;

7 (2) The gratuitous care, including the practice of respiratory care,
8 of the ill by a friend or member of the family or by a person who is not
9 licensed to practice respiratory care if such person does not represent
10 himself or herself as a respiratory care practitioner;

11 (3) The practice of respiratory care by nurses, physicians,
12 physician assistants, physical therapists, or any other professional
13 required to be licensed under the Uniform Credentialing Act when such
14 practice is within the scope of practice for which that person is
15 licensed to practice in this state;

16 (4) The practice of any respiratory care practitioner of this state
17 or any other state or territory while employed by the federal government
18 or any bureau or division thereof while in the discharge of his or her
19 official duties;

20 (5) Techniques defined as pulmonary function testing and the
21 administration of aerosol and inhalant medications to the
22 cardiorespiratory system as it relates to pulmonary function technology
23 administered by a registered pulmonary function technologist credentialed
24 by the National Board for Respiratory Care or a certified pulmonary
25 function technologist credentialed by the National Board for Respiratory
26 Care; or

27 (6) The performance of oxygen therapy or the initiation of
28 noninvasive positive pressure ventilation by a registered
29 polysomnographic technologist relating to the study of sleep disorders if
30 such procedures are performed or initiated under the supervision of a
31 licensed physician at a facility accredited by the American Academy of

1 Sleep Medicine.

2 Sec. 3. The State of Nebraska adopts the Physical Therapy Licensure
3 Compact in the form substantially as follows:

4 ARTICLE I

5 PURPOSE

6 a. The purpose of the Physical Therapy Licensure Compact is to
7 facilitate interstate practice of physical therapy with the goal of
8 improving public access to physical therapy services. The practice of
9 physical therapy occurs in the state where the patient or client is
10 located at the time of the patient or client encounter. The Compact
11 preserves the regulatory authority of states to protect public health and
12 safety through the current system of state licensure.

13 b. This Compact is designed to achieve the following objectives:

14 1. Increase public access to physical therapy services by providing
15 for the mutual recognition of other member state licenses;

16 2. Enhance the states' ability to protect the public's health and
17 safety;

18 3. Encourage the cooperation of member states in regulating
19 multistate physical therapy practice;

20 4. Support spouses of relocating military members;

21 5. Enhance the exchange of licensure, investigative, and
22 disciplinary information between member states; and

23 6. Allow a remote state to hold a provider of services with a
24 compact privilege in that state accountable to that state's practice
25 standards.

26 ARTICLE II

27 DEFINITIONS

28 As used in the Physical Therapy Licensure Compact, and except as
29 otherwise provided, the following definitions shall apply:

30 1. Active duty military means full-time duty status in the active
31 uniformed service of the United States, including members of the National

1 Guard and Reserve on active duty orders pursuant to 10 U.S.C. 1209 and
2 1211.

3 2. Adverse action means disciplinary action taken by a physical
4 therapy licensing board based upon misconduct, unacceptable performance,
5 or a combination of both.

6 3. Alternative program means a nondisciplinary monitoring or
7 practice remediation process approved by a physical therapy licensing
8 board. This includes, but is not limited to, substance abuse issues.

9 4. Commission means the Physical Therapy Compact Commission which is
10 the national administrative body whose membership consists of all states
11 that have enacted the Compact.

12 5. Compact privilege means the authorization granted by a remote
13 state to allow a licensee from another member state to practice as a
14 physical therapist or work as a physical therapist assistant in the
15 remote state under its laws and rules. The practice of physical therapy
16 occurs in the member state where the patient or client is located at the
17 time of the patient or client encounter.

18 6. Continuing competence means a requirement, as a condition of
19 license renewal, to provide evidence of participation in, or completion
20 of, educational and professional activities relevant to practice or area
21 of work.

22 7. Data system means a repository of information about licensees,
23 including examination, licensure, investigative, compact privilege, and
24 adverse action.

25 8. Encumbered license means a license that a physical therapy
26 licensing board has limited in any way.

27 9. Executive board means a group of directors elected or appointed
28 to act on behalf of, and within the powers granted to them by, the
29 Commission.

30 10. Home state means the member state that is the licensee's primary
31 state of residence.

1 11. Investigative information means information, records, and
2 documents received or generated by a physical therapy licensing board
3 pursuant to an investigation.

4 12. Jurisprudence requirement means the assessment of an
5 individual's knowledge of the laws and rules governing the practice of
6 physical therapy in a state.

7 13. Licensee means an individual who currently holds an
8 authorization from the state to practice as a physical therapist or to
9 work as a physical therapist assistant.

10 14. Member state means a state that has enacted the Compact.

11 15. Party state means any member state in which a licensee holds a
12 current license or compact privilege or is applying for a license or
13 compact privilege.

14 16. Physical therapist means an individual who is licensed by a
15 state to practice physical therapy.

16 17. Physical therapist assistant means an individual who is licensed
17 or certified by a state and who assists the physical therapist in
18 selected components of physical therapy.

19 18. Physical therapy, physical therapy practice, and the practice of
20 physical therapy mean the care and services provided by or under the
21 direction and supervision of a licensed physical therapist.

22 19. Physical therapy licensing board means the agency of a state
23 that is responsible for the licensing and regulation of physical
24 therapists and physical therapist assistants.

25 20. Remote state means a member state, other than the home state,
26 where a licensee is exercising or seeking to exercise the compact
27 privilege.

28 21. Rule means a regulation, principle, or directive promulgated by
29 the Commission that has the force of law.

30 22. State means any state, commonwealth, district, or territory of
31 the United States that regulates the practice of physical therapy.

1 ARTICLE III

2 STATE PARTICIPATION IN THE COMPACT

3 a. To participate in the Physical Therapy Licensure Compact, a state
4 must:

5 1. Participate fully in the Commission's data system, including
6 using the Commission's unique identifier as defined in rules;

7 2. Have a mechanism in place for receiving and investigating
8 complaints about licensees;

9 3. Notify the Commission, in compliance with the terms of the
10 Compact and rules, of any adverse action or the availability of
11 investigative information regarding a licensee;

12 4. Fully implement a criminal background check requirement, within a
13 timeframe established by rule, by receiving the results of the Federal
14 Bureau of Investigation record search on criminal background checks and
15 use the results in making licensure decisions in accordance with this
16 Article;

17 5. Comply with the rules of the Commission;

18 6. Utilize a recognized national examination as a requirement for
19 licensure pursuant to the rules of the Commission; and

20 7. Have continuing competence requirements as a condition for
21 license renewal.

22 b. Upon adoption of this statute, the member state shall have the
23 authority to obtain biometric-based information from each physical
24 therapy licensure applicant and submit this information to the Federal
25 Bureau of Investigation for a criminal background check in accordance
26 with 28 U.S.C. 534 and 34 U.S.C. 40316.

27 c. A member state shall grant the compact privilege to a licensee
28 holding a valid unencumbered license in another member state in
29 accordance with the terms of the Compact and rules.

30 d. Member states may charge a fee for granting a compact privilege.

31 ARTICLE IV

1 COMPACT PRIVILEGE

2 a. To exercise the compact privilege under the terms and provisions
3 of the Physical Therapy Licensure Compact, the licensee shall:

4 1. Hold a license in the home state;

5 2. Have no encumbrance on any state license;

6 3. Be eligible for a compact privilege in any member state in
7 accordance with paragraphs d, g, and h of this Article;

8 4. Have not had any adverse action against any license or compact
9 privilege within the previous two years;

10 5. Notify the Commission that the licensee is seeking the compact
11 privilege within a remote state;

12 6. Pay any applicable fees, including any state fee, for the compact
13 privilege;

14 7. Meet any jurisprudence requirements established by the remote
15 state in which the licensee is seeking a compact privilege; and

16 8. Report to the Commission adverse action taken by any nonmember
17 state within thirty days from the date the adverse action is taken.

18 b. The compact privilege is valid until the expiration date of the
19 home license. The licensee must comply with the requirements of paragraph
20 a of this Article to maintain the compact privilege in the remote state.

21 c. A licensee providing physical therapy in a remote state under the
22 compact privilege shall function within the laws and regulations of the
23 remote state.

24 d. A licensee providing physical therapy in a remote state is
25 subject to that state's regulatory authority. A remote state may, in
26 accordance with due process and that state's laws, remove a licensee's
27 compact privilege in the remote state for a specific period of time,
28 impose fines, or take any other necessary actions to protect the health
29 and safety of its citizens. The licensee is not eligible for a compact
30 privilege in any state until the specific time for removal has passed and
31 all fines are paid.

1 e. If a home state license is encumbered, the licensee shall lose
2 the compact privilege in any remote state until the following occur:

- 3 1. The home state license is no longer encumbered; and
4 2. Two years have elapsed from the date of the adverse action.

5 f. Once an encumbered license in the home state is restored to good
6 standing, the licensee must meet the requirements of paragraph a of this
7 Article to obtain a compact privilege in any remote state.

8 g. If a licensee's compact privilege in any remote state is removed,
9 the individual shall lose the compact privilege in any remote state until
10 the following occur:

- 11 1. The specific period of time for which the compact privilege was
12 removed has ended;
13 2. All fines have been paid; and
14 3. Two years have elapsed from the date of the adverse action.

15 h. Once the requirements of paragraph g of this Article have been
16 met, the licensee must meet the requirements in paragraph a of this
17 Article to obtain a compact privilege in a remote state.

18 ARTICLE V

19 ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES

20 A licensee who is active duty military or is the spouse of an
21 individual who is active duty military may designate one of the following
22 as the home state:

- 23 a. Home of record;
24 b. Permanent change of station (PCS); or
25 c. State of current residence if it is different than the PCS state
26 or home of record.

27 ARTICLE VI

28 ADVERSE ACTIONS

29 a. A home state shall have exclusive power to impose adverse action
30 against a license issued by the home state.

31 b. A home state may take adverse action based on the investigative

1 information of a remote state, so long as the home state follows its own
2 procedures for imposing adverse action.

3 c. Nothing in the Physical Therapy Licensure Compact shall override
4 a member state's decision that participation in an alternative program
5 may be used in lieu of adverse action and that such participation shall
6 remain nonpublic if required by the member state's laws. Member states
7 must require licensees who enter any alternative programs in lieu of
8 discipline to agree not to practice in any other member state during the
9 term of the alternative program without prior authorization from such
10 other member state.

11 d. Any member state may investigate actual or alleged violations of
12 the statutes and rules authorizing the practice of physical therapy in
13 any other member state in which a physical therapist or physical
14 therapist assistant holds a license or compact privilege.

15 e. A remote state shall have the authority to:

16 1. Take adverse actions as set forth in paragraph d of Article IV
17 against a licensee's compact privilege in the state;

18 2. Issue subpoenas for both hearings and investigations that require
19 the attendance and testimony of witnesses, and the production of
20 evidence. Subpoenas issued by a physical therapy licensing board in a
21 party state for the attendance and testimony of witnesses, or the
22 production of evidence from another party state, shall be enforced in the
23 latter state by any court of competent jurisdiction, according to the
24 practice and procedure of that court applicable to subpoenas issued in
25 proceedings pending before it. The issuing authority shall pay any
26 witness fees, travel expenses, mileage, and other fees required by the
27 service statutes of the state where the witnesses or evidence are
28 located; and

29 3. If otherwise permitted by state law, recover from the licensee
30 the costs of investigations and disposition of cases resulting from any
31 adverse action taken against that licensee.

1 f. Joint Investigations

2 1. In addition to the authority granted to a member state by its
3 respective physical therapy practice act or other applicable state law, a
4 member state may participate with other member states in joint
5 investigations of licensees.

6 2. Member states shall share any investigative, litigation, or
7 compliance materials in furtherance of any joint or individual
8 investigation initiated under the Compact.

9 ARTICLE VII

10 ESTABLISHMENT OF THE PHYSICAL THERAPY COMPACT COMMISSION

11 a. The member states hereby create and establish a joint public
12 agency known as the Physical Therapy Compact Commission:

13 1. The Commission is an instrumentality of the Compact states.

14 2. Venue is proper and judicial proceedings by or against the
15 Commission shall be brought solely and exclusively in a court of
16 competent jurisdiction where the principal office of the Commission is
17 located. The Commission may waive venue and jurisdictional defenses to
18 the extent it adopts or consents to participate in alternative dispute
19 resolution proceedings.

20 3. Nothing in the Physical Therapy Licensure Compact shall be
21 construed to be a waiver of sovereign immunity.

22 b. Membership, Voting, and Meetings

23 1. Each member state shall have and be limited to one delegate
24 selected by that member state's physical therapy licensing board.

25 2. The delegate shall be a current member of the physical therapy
26 licensing board, who is a physical therapist, a physical therapist
27 assistant, a public member, or the administrator of the physical therapy
28 licensing board.

29 3. Any delegate may be removed or suspended from office as provided
30 by the law of the state from which the delegate is appointed.

31 4. The member state physical therapy licensing board shall fill any

1 vacancy occurring in the Commission.

2 5. Each delegate shall be entitled to one vote with regard to the
3 promulgation of rules and creation of bylaws and shall otherwise have an
4 opportunity to participate in the business and affairs of the Commission.

5 6. A delegate shall vote in person or by such other means as
6 provided in the bylaws. The bylaws may provide for delegates'
7 participation in meetings by telephone or other means of communication.

8 7. The Commission shall meet at least once during each calendar
9 year. Additional meetings shall be held as set forth in the bylaws.

10 c. The Commission shall have the following powers and duties:

11 1. Establish the fiscal year of the Commission;

12 2. Establish bylaws;

13 3. Maintain its financial records in accordance with the bylaws;

14 4. Meet and take such actions as are consistent with the Compact and
15 the bylaws;

16 5. Promulgate uniform rules to facilitate and coordinate
17 implementation and administration of the Compact. The rules shall have
18 the force and effect of law and shall be binding in all member states;

19 6. Bring and prosecute legal proceedings or actions in the name of
20 the Commission, provided that the standing of any state physical therapy
21 licensing board to sue or be sued under applicable law shall not be
22 affected;

23 7. Purchase and maintain insurance and bonds;

24 8. Borrow, accept, or contract for services of personnel, including,
25 but not limited to, employees of a member state;

26 9. Hire employees, elect or appoint officers, fix compensation,
27 define duties, grant such individuals appropriate authority to carry out
28 the purposes of the Compact, and to establish the Commission's personnel
29 policies and programs relating to conflicts of interest, qualifications
30 of personnel, and other related personnel matters;

31 10. Accept any and all appropriate donations and grants of money,

1 equipment, supplies, materials, and services, and to receive, utilize,
2 and dispose of the same; provided that at all times the Commission shall
3 avoid any appearance of impropriety or conflict of interest;

4 11. Lease, purchase, accept appropriate gifts or donations of, or
5 otherwise to own, hold, improve, or use, any property, real, personal, or
6 mixed; provided that at all times the Commission shall avoid any
7 appearance of impropriety;

8 12. Sell, convey, mortgage, pledge, lease, exchange, abandon, or
9 otherwise dispose of any property real, personal, or mixed;

10 13. Establish a budget and make expenditures;

11 14. Borrow money;

12 15. Appoint committees, including standing committees composed of
13 members, state regulators, state legislators or their representatives,
14 and consumer representatives, and such other interested persons as may be
15 designated in the Compact and the bylaws;

16 16. Provide and receive information from, and cooperate with, law
17 enforcement agencies;

18 17. Establish and elect an executive board; and

19 18. Perform such other functions as may be necessary or appropriate
20 to achieve the purposes of the Compact consistent with the state
21 regulation of physical therapy licensure and practice.

22 d. The Executive Board

23 The executive board shall have the power to act on behalf of the
24 Commission according to the terms of the Compact.

25 1. The executive board shall be composed of nine members:

26 A. Seven voting members who are elected by the Commission from the
27 current membership of the Commission;

28 B. One ex officio, nonvoting member from the recognized national
29 physical therapy professional association; and

30 C. One ex officio, nonvoting member from the recognized membership
31 organization of the physical therapy licensing boards.

1 2. The ex officio members will be selected by their respective
2 organizations.

3 3. The Commission may remove any member of the executive board as
4 provided in bylaws.

5 4. The executive board shall meet at least annually.

6 5. The executive board shall have the following duties and
7 responsibilities:

8 A. Recommend to the entire Commission changes to the rules or
9 bylaws, changes to the Compact, fees paid by Compact member states such
10 as annual dues, and any commission Compact fee charged to licensees for
11 the compact privilege;

12 B. Ensure Compact administration services are appropriately
13 provided, contractual or otherwise;

14 C. Prepare and recommend the budget;

15 D. Maintain financial records on behalf of the Commission;

16 E. Monitor Compact compliance of member states and provide
17 compliance reports to the Commission;

18 F. Establish additional committees as necessary; and

19 G. Other duties as provided in rules or bylaws.

20 e. Meetings of the Commission

21 1. All meetings shall be open to the public, and public notice of
22 meetings shall be given in the same manner as required under the
23 rulemaking provisions in Article IX.

24 2. The Commission or the executive board or other committees of the
25 Commission may convene in a closed, nonpublic meeting if the Commission
26 or executive board or other committees of the Commission must discuss:

27 A. Noncompliance of a member state with its obligations under the
28 Compact;

29 B. The employment, compensation, discipline, or other matters,
30 practices or procedures related to specific employees or other matters
31 related to the Commission's internal personnel practices and procedures;

1 C. Current, threatened, or reasonably anticipated litigation;

2 D. Negotiation of contracts for the purchase, lease, or sale of
3 goods, services, or real estate;

4 E. Accusing any person of a crime or formally censuring any person;

5 F. Disclosure of trade secrets or commercial or financial
6 information that is privileged or confidential;

7 G. Disclosure of information of a personal nature where disclosure
8 would constitute a clearly unwarranted invasion of personal privacy;

9 H. Disclosure of investigative records compiled for law enforcement
10 purposes;

11 I. Disclosure of information related to any investigative reports
12 prepared by or on behalf of or for use of the Commission or other
13 committee charged with responsibility of investigation or determination
14 of compliance issues pursuant to the Compact; or

15 J. Matters specifically exempted from disclosure by federal or
16 member state statute.

17 3. If a meeting, or portion of a meeting, is closed pursuant to this
18 Article, the Commission's legal counsel or designee shall certify that
19 the meeting may be closed and shall reference each relevant exempting
20 provision.

21 4. The Commission shall keep minutes that fully and clearly describe
22 all matters discussed in a meeting and shall provide a full and accurate
23 summary of actions taken, and the reasons therefore, including a
24 description of the views expressed. All documents considered in
25 connection with an action shall be identified in such minutes. All
26 minutes and documents of a closed meeting shall remain under seal,
27 subject to release by a majority vote of the Commission or order of a
28 court of competent jurisdiction.

29 f. Financing of the Commission

30 1. The Commission shall pay, or provide for the payment of, the
31 reasonable expenses of its establishment, organization, and ongoing

1 activities.

2 2. The Commission may accept any and all appropriate revenue
3 sources, donations, and grants of money, equipment, supplies, materials,
4 and services.

5 3. The Commission may levy on and collect an annual assessment from
6 each member state or impose fees on other parties to cover the cost of
7 the operations and activities of the Commission and its staff, which must
8 be in a total amount sufficient to cover its annual budget as approved
9 each year for which revenue is not provided by other sources. The
10 aggregate annual assessment amount shall be allocated based upon a
11 formula to be determined by the Commission, which shall promulgate a rule
12 binding upon all member states.

13 4. The Commission shall not incur obligations of any kind prior to
14 securing the funds adequate to meet the same; nor shall the Commission
15 pledge the credit of any of the member states, except by and with the
16 authority of the member state.

17 5. The Commission shall keep accurate accounts of all receipts and
18 disbursements. The receipts and disbursements of the Commission shall be
19 subject to the audit and accounting procedures established under its
20 bylaws. However, all receipts and disbursements of funds handled by the
21 Commission shall be audited yearly by a certified or licensed public
22 accountant, and the report of the audit shall be included in and become
23 part of the annual report of the Commission.

24 g. Qualified Immunity, Defense, and Indemnification

25 1. The members, officers, executive director, employees, and
26 representatives of the Commission shall have no greater liability, either
27 personally or in their official capacity, for any claim for damage to or
28 loss of property or personal injury or other civil liability caused by or
29 arising out of any actual or alleged act, error, or omission that
30 occurred, or that the person against whom the claim is made had a
31 reasonable basis for believing occurred, within the scope of Commission

1 employment, duties, or responsibilities, than a state employee would have
2 under the same or similar circumstances; provided that nothing in this
3 paragraph shall be construed to protect any such person from suit or
4 liability for any damage, loss, injury, or liability caused by the
5 intentional or willful or wanton misconduct of that person.

6 2. The Commission shall defend any member, officer, executive
7 director, employee, or representative of the Commission in any civil
8 action seeking to impose liability arising out of any actual or alleged
9 act, error, or omission that occurred within the scope of Commission
10 employment, duties, or responsibilities, or that the person against whom
11 the claim is made had a reasonable basis for believing occurred within
12 the scope of Commission employment, duties, or responsibilities; provided
13 that nothing in this paragraph shall be construed to prohibit that person
14 from retaining his or her own counsel; and provided further, that the
15 actual or alleged act, error, or omission did not result from that
16 person's intentional or willful or wanton misconduct.

17 3. The Commission shall indemnify and hold harmless any member,
18 officer, executive director, employee, or representative of the
19 Commission for the amount of any settlement or judgment obtained against
20 that person arising out of any actual or alleged act, error, or omission
21 that occurred within the scope of Commission employment, duties, or
22 responsibilities, or that such person had a reasonable basis for
23 believing occurred within the scope of Commission employment, duties, or
24 responsibilities, provided that the actual or alleged act, error, or
25 omission did not result from the intentional or willful or wanton
26 misconduct of that person.

27 ARTICLE VIII

28 DATA SYSTEM

29 a. The Commission shall provide for the development, maintenance,
30 and utilization of a coordinated data base and reporting system
31 containing licensure, adverse action, and investigative information on

1 all licensed individuals in member states.

2 b. Notwithstanding any other provision of state law to the contrary,
3 a member state shall submit a uniform data set to the data system on all
4 individuals to whom the Physical Therapy Licensure Compact is applicable
5 as required by the rules of the Commission, including:

6 1. Identifying information;

7 2. Licensure data;

8 3. Adverse actions against a license or compact privilege;

9 4. Nonconfidential information related to alternative program
10 participation;

11 5. Any denial of application for licensure, and the reason for such
12 denial; and

13 6. Other information that may facilitate the administration of the
14 Compact, as determined by the rules of the Commission.

15 c. Investigative information pertaining to a licensee in any member
16 state will only be available to other party states.

17 d. The Commission shall promptly notify all member states of any
18 adverse action taken against a licensee or an individual applying for a
19 license. Adverse action information pertaining to a licensee in any
20 member state will be available to any other member state.

21 e. Member states contributing information to the data system may
22 designate information that may not be shared with the public without the
23 express permission of the contributing state.

24 f. Any information submitted to the data system that is subsequently
25 required to be expunged by the laws of the member state contributing the
26 information shall be removed from the data system.

27 ARTICLE IX

28 RULEMAKING

29 a. The Commission shall exercise its rulemaking powers pursuant to
30 the criteria set forth in this Article and the rules adopted thereunder.
31 Rules and amendments shall become binding as of the date specified in

1 each rule or amendment.

2 b. If a majority of the legislatures of the member states rejects a
3 rule, by enactment of a statute or resolution in the same manner used to
4 adopt the Physical Therapy Licensure Compact within four years of the
5 date of adoption of the rule, then such rule shall have no further force
6 and effect in any member state.

7 c. Rules or amendments to the rules shall be adopted at a regular or
8 special meeting of the Commission.

9 d. Prior to promulgation and adoption of a final rule or rules by
10 the Commission, and at least thirty days in advance of the meeting at
11 which the rule will be considered and voted upon, the Commission shall
12 file a notice of proposed rulemaking:

13 1. On the web site of the Commission or other publicly accessible
14 platform; and

15 2. On the web site of each member state physical therapy licensing
16 board or other publicly accessible platform or the publication in which
17 each state would otherwise publish proposed rules.

18 e. The notice of proposed rulemaking shall include:

19 1. The proposed time, date, and location of the meeting in which the
20 rule will be considered and voted upon;

21 2. The text of the proposed rule or amendment and the reason for the
22 proposed rule;

23 3. A request for comments on the proposed rule from any interested
24 person; and

25 4. The manner in which interested persons may submit notice to the
26 Commission of their intention to attend the public hearing and any
27 written comments.

28 f. Prior to adoption of a proposed rule, the Commission shall allow
29 persons to submit written data, facts, opinions, and arguments, which
30 shall be made available to the public.

31 g. The Commission shall grant an opportunity for a public hearing

1 before it adopts a rule or amendment if a hearing is requested by:

2 1. At least twenty-five persons;

3 2. A state or federal governmental subdivision or agency; or

4 3. An association having at least twenty-five members.

5 h. If a hearing is held on the proposed rule or amendment, the
6 Commission shall publish the place, time, and date of the scheduled
7 public hearing. If the hearing is held via electronic means, the
8 Commission shall publish the mechanism for access to the electronic
9 hearing.

10 1. All persons wishing to be heard at the hearing shall notify the
11 executive director of the Commission or other designated member in
12 writing of their desire to appear and testify at the hearing not less
13 than five business days before the scheduled date of the hearing.

14 2. Hearings shall be conducted in a manner providing each person who
15 wishes to comment a fair and reasonable opportunity to comment orally or
16 in writing.

17 3. All hearings will be recorded. A copy of the recording will be
18 made available on request.

19 4. Nothing in this section shall be construed as requiring a
20 separate hearing on each rule. Rules may be grouped for the convenience
21 of the Commission at hearings required by this Article.

22 i. Following the scheduled hearing date, or by the close of business
23 on the scheduled hearing date if the hearing was not held, the Commission
24 shall consider all written and oral comments received.

25 j. If no written notice of intent to attend the public hearing by
26 interested parties is received, the Commission may proceed with
27 promulgation of the proposed rule without a public hearing.

28 k. The Commission shall, by majority vote of all members, take final
29 action on the proposed rule and shall determine the effective date of the
30 rule, if any, based on the rulemaking record and the full text of the
31 rule.

1 1. Upon determination that an emergency exists, the Commission may
2 consider and adopt an emergency rule without prior notice, opportunity
3 for comment, or hearing, provided that the usual rulemaking procedures
4 provided in the Compact and in this section shall be retroactively
5 applied to the rule as soon as reasonably possible, in no event later
6 than ninety days after the effective date of the rule. For the purposes
7 of this paragraph, an emergency rule is one that must be adopted
8 immediately in order to:

- 9 1. Meet an imminent threat to public health, safety, or welfare;
10 2. Prevent a loss of Commission or member state funds;
11 3. Meet a deadline for the promulgation of an administrative rule
12 that is established by federal law or rule; or
13 4. Protect public health and safety.

14 m. The Commission or an authorized committee of the Commission may
15 direct revisions to a previously adopted rule or amendment for purposes
16 of correcting typographical errors, errors in format, errors in
17 consistency, or grammatical errors. Public notice of any revisions shall
18 be posted on the web site of the Commission. The revision shall be
19 subject to challenge by any person for a period of thirty days after
20 posting. The revision may be challenged only on grounds that the revision
21 results in a material change to a rule. A challenge shall be made in
22 writing, and delivered to the chair of the Commission prior to the end of
23 the notice period. If no challenge is made, the revision will take effect
24 without further action. If the revision is challenged, the revision may
25 not take effect without the approval of the Commission.

26 ARTICLE X
27 OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

28 a. Oversight

29 1. The executive, legislative, and judicial branches of state
30 government in each member state shall enforce the Physical Therapy
31 Licensure Compact and take all actions necessary and appropriate to

1 effectuate the Compact's purposes and intent. The provisions of the
2 Compact and the rules promulgated under the Compact shall have standing
3 as statutory law.

4 2. All courts shall take judicial notice of the Compact and the
5 rules in any judicial or administrative proceeding in a member state
6 pertaining to the subject matter of the Compact which may affect the
7 powers, responsibilities, or actions of the Commission.

8 3. The Commission shall be entitled to receive service of process in
9 any such proceeding and shall have standing to intervene in such a
10 proceeding for all purposes. Failure to provide service of process to the
11 Commission shall render a judgment or order void as to the Commission,
12 the Compact, or promulgated rules.

13 b. Default, Technical Assistance, and Termination

14 1. If the Commission determines that a member state has defaulted in
15 the performance of its obligations or responsibilities under the Compact
16 or the promulgated rules, the Commission shall:

17 A. Provide written notice to the defaulting state and other member
18 states of the nature of the default, the proposed means of curing the
19 default, or any other action to be taken by the Commission; and

20 B. Provide remedial training and specific technical assistance
21 regarding the default.

22 2. If a state in default fails to cure the default, the defaulting
23 state may be terminated from the Compact upon an affirmative vote of a
24 majority of the member states, and all rights, privileges, and benefits
25 conferred by the Compact may be terminated on the effective date of
26 termination. A cure of the default does not relieve the offending state
27 of obligations or liabilities incurred during the period of default.

28 3. Termination of membership in the Compact shall be imposed only
29 after all other means of securing compliance have been exhausted. Notice
30 of intent to suspend or terminate shall be given by the Commission to the
31 governor, the majority and minority leaders of the defaulting state's

1 legislature or the Speaker if no such leaders exist, and each of the
2 member states.

3 4. A state that has been terminated is responsible for all
4 assessments, obligations, and liabilities incurred through the effective
5 date of termination, including obligations that extend beyond the
6 effective date of termination.

7 5. The Commission shall not bear any costs related to a state that
8 is found to be in default or that has been terminated from the Compact,
9 unless agreed upon in writing between the Commission and the defaulting
10 state.

11 6. The defaulting state may appeal the action of the Commission by
12 petitioning the United States District Court for the District of Columbia
13 or the federal district where the Commission has its principal offices.
14 The prevailing member shall be awarded all costs of such litigation,
15 including reasonable attorney's fees.

16 c. Dispute Resolution

17 1. Upon request by a member state, the Commission shall attempt to
18 resolve disputes related to the Compact that arise among member states
19 and between member and nonmember states.

20 2. The Commission shall promulgate a rule providing for both
21 mediation and binding dispute resolution for disputes as appropriate.

22 d. Enforcement

23 1. The Commission, in the reasonable exercise of its discretion,
24 shall enforce the provisions and rules of the Compact.

25 2. By majority vote, the Commission may initiate legal action in the
26 United States District Court for the District of Columbia or the federal
27 district where the Commission has its principal offices against a member
28 state in default to enforce compliance with the Compact and its
29 promulgated rules and bylaws. The relief sought may include both
30 injunctive relief and damages. In the event judicial enforcement is
31 necessary, the prevailing member shall be awarded all costs of such

1 litigation, including reasonable attorney's fees.

2 3. The remedies in this Article shall not be the exclusive remedies
3 of the Commission. The Commission may pursue any other remedies available
4 under federal or state law.

5 ARTICLE XI

6 DATE OF IMPLEMENTATION OF THE INTERSTATE COMMISSION FOR PHYSICAL
7 THERAPY PRACTICE AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

8 a. The Physical Therapy Licensure Compact shall come into effect on
9 the date on which the Compact is enacted into law in the tenth member
10 state. The provisions, which become effective at that time, shall be
11 limited to the powers granted to the Commission relating to assembly and
12 the promulgation of rules. Thereafter, the Commission shall meet and
13 exercise rulemaking powers necessary to the implementation and
14 administration of the Compact.

15 b. Any state that joins the Compact subsequent to the Commission's
16 initial adoption of the rules shall be subject to the rules as they exist
17 on the date on which the Compact becomes law in that state. Any rule that
18 has been previously adopted by the Commission shall have the full force
19 and effect of law on the day the Compact becomes law in that state.

20 c. Any member state may withdraw from the Compact by enacting a
21 statute repealing the same.

22 1. A member state's withdrawal shall not take effect until six
23 months after enactment of the repealing statute.

24 2. Withdrawal shall not affect the continuing requirement of the
25 withdrawing state's physical therapy licensing board to comply with the
26 investigative and adverse action reporting requirements of the Compact
27 prior to the effective date of withdrawal.

28 d. Nothing contained in the Compact shall be construed to invalidate
29 or prevent any physical therapy licensure agreement or other cooperative
30 arrangement between a member state and a nonmember state that does not
31 conflict with the Compact.

1 e. The Compact may be amended by the member states. No amendment to
2 the Compact shall become effective and binding upon any member state
3 until it is enacted into the laws of all member states.

4 ARTICLE XII

5 CONSTRUCTION AND SEVERABILITY

6 The Physical Therapy Licensure Compact shall be liberally construed
7 so as to effectuate the purposes of the Compact. The provisions of the
8 Compact shall be severable and if any phrase, clause, sentence, or
9 provision of the Compact is declared to be contrary to the constitution
10 of any party state or of the United States or the applicability thereof
11 to any government, agency, person, or circumstance is held invalid, the
12 validity of the remainder of the Compact and the applicability thereof to
13 any government, agency, person, or circumstance shall not be affected
14 thereby. If the Compact shall be held contrary to the constitution of any
15 party state, the Compact shall remain in full force and effect as to the
16 remaining party states and in full force and effect as to the party state
17 affected as to all severable matters.

18 Sec. 4. Original sections 38-131 and 38-3208, Reissue Revised
19 Statutes of Nebraska, are repealed.